

EDWARD T. BERGO, as Chairman and
KARL BIK as Co-Chairman of the BOARD
OF TRUSTEES for the CEMENT MASONS
HEALTH AND WELFARE TRUST FUND
FOR NORTHERN CALIFORNIA, et al.,

No. C 04-3242 CRB

ORDER GRANTING DEFAULT JUDGMENT

Plaintiffs,

LOOMIS & SORIA INC., and FRANK
LOOMIS

Defendants.

Now before the Court is plaintiffs' motion for default judgment. Neither defendant Frank Loomis nor defendant Loomis & Soria have answered the Complaint or otherwise communicated with the Court; however, on March 25, 2005, Loomis & Soria filed bankruptcy. Accordingly, plaintiffs' motion for default judgment is directed solely to defendant Frank Loomis. After carefully considering the papers filed by the plaintiffs, the Court concludes that oral argument is unnecessary, see Local Rule 7-1(b), and GRANTS the plaintiffs' motion for default judgment as to Frank Loomis.

DISCUSSION

Plaintiffs filed this ERISA action to recover unpaid contributions to an ERISA plan, as well as liquidated damages, interest, and attorneys fees and costs, on August 4, 2004.

1 Defendant Frank Loomis ("Loomis") was served with the Complaint on or around November
2 10, 2004, but failed to answer or otherwise communicate with the Court. The Clerk of the
3 Court entered default against Loomis on December 21, 2004. Plaintiffs now move for a
4 default judgment against Loomis in the total amount of \$407,319.14. This amount consists
5 of \$299,873.68 in unpaid contributions for November 2002 through May 2004; \$2,700 in
6 liquidated damages; pre-judgment interest in the amount of \$90,600.58 through May 13,
7 2005 (and \$147.88 per day thereafter), \$13,702.50 in attorneys' fees and costs of \$442.38.

8 DISCUSSION

9 ERISA provides that

10 [e]very employer who is obligated to make contributions to a multiemployer
11 plan under the terms of a collectively bargained agreement shall to the extent
not inconsistent with law, make such contributions in accordance with the
12 terms and conditions of such plan or such agreement.

13 29 U.S.C. § 1145. ERISA also authorizes an award of interest on delinquent and unpaid
14 contributions, as well as liquidated damages and attorneys fees and costs in an action for
15 collection of contributions. See 29 U.S.C. § 1132(g). In the Ninth Circuit, to qualify for an
16 award of statutory liquidated damages, unpaid contributions must exist at the time the lawsuit
17 was filed. See Idaho Plumbers & Pipe Fitters Health and Welfare Fund v. United
18 Mechanical Contractors, Inc., 875 F.2d 212, 215 (9th Cir. 1989).

19 As is set forth above, when plaintiffs filed this lawsuit contributions were overdue for
20 November 2002 through May 2004; thus, plaintiffs are entitled to an award of statutory
21 liquidated damages on those overdue amounts. Moreover, while Loomis & Soria is the
22 actual signatory to the documents obligating Loomis & Soria to pay amounts to the plaintiff
23 trust funds, plaintiffs have established as a matter of law that Loomis--the sole owner,
24 President, and Chief Executive Officer of Loomis & Soria--is considered an employer for
25 purposes of ERISA liability.

26 The declarations and exhibits filed by plaintiffs establish that Loomis owes plaintiff's
27 a sum certain, as is set forth above. The Court will therefore grant plaintiffs' motion for
28 default judgment in the amount sought by plaintiffs, less \$2300.00 for attorneys' fees which

1 are reasonably attributable to fees incurred in connection with plaintiffs' pursuit of a
2 defendant, Dolores Loomis, whom they subsequently voluntarily dismissed.

3 **CONCLUSION**

4 The Court GRANTS plaintiffs' motion for a default judgment against Frank Loomis
5 in the total amount of \$405,906.42. As the only remaining defendant, Loomis & Soria, is in
6 bankruptcy, the Court will administratively close this action and issue a separate judgment
7 against Frank Loomis.

8 **IT IS SO ORDERED.**

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10 Dated: May 19, 2005

/s/
11 CHARLES R. BREYER
12 UNITED STATES DISTRICT JUDGE
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